

REMARKS

This is in full and timely response to the above-identified Office Action. The above listing of the claims supersedes any previous listing. Favorable reexamination and reconsideration is respectfully requested in view of the preceding amendments and the following remarks.

Election/Restriction

In this Office Action the Examiner notes that the election was made without traverse. However, because comments directed to the impropriety of the basis for this requirement were presented, the Examiner has taken the improper liberty of assuming that the client did not mean "without" traverse and has taken the response to have been made "with" traverse. Errors in the Examiner's position were merely pointed out. This is not a traverse. In fact, the Examiner admits error in that claim 1 has to be generic.

Correction of the position that any comments amount to a negation of the Applicant's election without traverse should be expressed in any subsequent action taken.

In that it is established that a tube having a cap is patentably distinct from a leaf spring, a compression spring etc., the same level of patentability is requested when considering the differences between the claimed subject matter and the art which is applied there against.

The Abstract

The abstract has been amended to obviate the use of the so called "legal phraseology" and thus overcomes the objection in connection therewith.

Claim Amendments

In this response, the claims which were withdrawn, viz., claims 10, 11, 14, and 18-23 are cancelled without disclaimer or prejudice. Claim 4 has been cancelled and the subject matter transferred to claim 1.

Rejection under 35 USC § 102

The rejection of claims 1-3, 13 and 15-16 under 35 USC § 102(b) as being anticipated by Prosenz, is respectfully traversed.

Claim 1 as amended now recites the use of energy-absorbing material, as distinguished from the material of the prefabricated elements, which energy-absorbing material is located in at

least one of the crash barrier elements, as part of the absorbing mechanism, and that the coupling arrangement is embedded in the energy-absorbing material. Applicant submits that no such structure is taught by Prosenz, inasmuch as the pin joints (8) of Prosenz are directly affixed to the elements (deflection strips 4).

Hence, whereas the coupling arrangement of Prosenz merely serve as a pivot about which the elements move, the coupling arrangement according to the claimed invention also provides an energy-absorbing mechanism.

Attention is called to the fact that claims 8 and 9 have neither been allowed nor rejected. The rejection is silent as to the subject matter of these claims and if this response does not result in the application being passed to allowance, it is submitted that a further non-final office action is required to obviate this oversight.

Rejections under 35 USC § 103

- 1) The rejection of claims 5, 6 and 13 under 35 USC § 103(a) as being unpatentable over Prosenz is respectfully traversed.

Attention is called to the fact that the rejection of claim 13 under § 103 apparently negates the rejection under § 102 in that it admits that the subject matter of this claim is not fully anticipated. Clarification is deemed necessary.

In connection with the rejection of claim 5, Applicant submits that the position that roadway barriers are made "of at least rubber" requires clarification. It is not clear if the rejection is asserting that all barriers contain at least some rubber. Nevertheless, the motivation to consider the use of rubber in the arrangement disclosed in Prosenz is not found in the rejection and it is submitted that a *prima facie* case has therefore not been established.

Regarding claim 6, the assumption that the hypothetical person of ordinary skill would moved to line the bore with a cup in order to strengthen the structure, is not seen as being well taken. The arrangement disclosed in Prosenz appears to be adequate for the disclosed purpose and there is no suggestion that the bores, which are formed in the elements of Prosenz to accept the pins 8, are insufficiently robust as to require re-enforcement. The issue of cost has not been considered in this rejection. Without good reason to go to the trouble and expense which is alleged to be obvious, there must be a driving influence. This is not seen as flowing from the disclosure of the Prosenz reference.

- 2) The rejection of claims 7 and 12 under 35 USC § 103(a) as being unpatentable over Prosenz further in view of Tagg is respectfully traversed.

In this rejection, the position is taken that the use of a hollow or tubular pin in Prosenz would "obtain a more secure connection." It is however, deemed self-evident that there is no need whatsoever to consider the structure which is shown in Fig. 7a of Tagg, in the arrangement disclosed in Prosenz for at least the point of cost, and further a tubular member is very apt to be weaker than the solid bar material that is used in Prosenz. The hypothetical person of ordinary skill would be more than well aware of the use of rebar in concrete structures. The use of the tubular element illustrated in Fig. 7a would present a notable increase in cost with respect to the construction of the Prosenz arrangement and this would not go unnoticed by the hypothetical person of ordinary skill should this issue arise.

As the Examiner will be well aware, in order to establish a *prima facie* case of obviousness, it is necessary to show that the hypothetical person of ordinary skill would, without any knowledge of the claimed subject matter and without any inventive activity, be motivated to arrive at the claimed subject matter given the guidance of the cited references when each is fully considered as statutorily required. In this case, there is nothing in either reference that would suggest the combination which is purported to be obvious and clearly what is known, e.g. rebar, would not lead toward the claimed subject matter.

- 3) The rejection of claim 17 under 35 USC § 103(a) as being unpatentable over Prosenz further in view of Lembo is respectfully traversed.

While Lembo shows the use of springs, these springs are used to force two pieces of material together. There is no need for the application of this type of force in Prosenz and accordingly no reason whatsoever to consider a transfer of teachings from Lembo. As noted above, the content of the claims of the instant application cannot be known to the hypothetical person of ordinary skill to allow a cherry picking spree. Given the disclosures of the two references cited in this rejection, there is nothing that would be gleaned to suggest the allegedly obvious transfer of teachings and therefore nothing to lead the hypothetical person of ordinary skill to the claimed subject matter.

Conclusion

It is respectfully submitted that the claims as they have been amended are allowable over the art which has been applied in this Office Action. Favorable reconsideration and allowance of this application are courteously solicited.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 07-1337 and please credit any excess fees to such deposit account.



Respectfully submitted,
LOWE HAUPTMAN & BERNER, LLP

Benjamin J. Hauptman
Registration No. 29,310

Customer Number: 22429
1700 Diagonal Road, Suite 310
Alexandria, Virginia 22314
(703) 684-1111 BJH/KT/ayw
Facsimile: (703) 518-5499
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